

REMARKS

Claims 1-33, 35-126, 128-142, 160, and 161 were pending in this application prior to the entry of the amendments set forth herein. After entry of this Amendment, claims 1-33, 35-126, 128-142, and 160-188 will be pending.

As an initial matter, Applicant requests the withdrawal of the finality of the Office Action mailed on September 8, 2004, since, as will be explained, that Office Action was improperly made final. In the outstanding Office Action, the Examiner withdrew each of the rejections set forth in the prior Office Action dated November 25, 2003, issued new grounds of rejection, and made the present Office Action final. Included in the new grounds of rejection in the outstanding Office Action is a rejection under Section 102 of claim 128. However, the November 25th Office Action failed to set forth any ground of rejection of claim 128, and Applicant specifically noted this failure at page 32 of the Amendment filed April 23, 2004. Since, in the April 23rd Amendment, claim 128 was not amended to include any additional limitations not previously present in that claim, but rather was only amended to place the claim in independent form, the final rejection of claim 128 is improper and so too is the finality of the Office Action. Additionally, in the Amendment dated April 23, 2004, at pages 44 and 45, Applicant provided reasons why claim 74 should have been examined along with the other elected claims. In the outstanding Office Action, the Examiner continued to withdraw claim 74 from consideration without addressing Applicant's arguments traversing that withdrawal. For at least this additional reason, the finality of the outstanding Office Action should be withdrawn.

As an additional initial matter, Applicant draws the Examiner's attention to two Information Disclosure Statements filed August 31, 2004, and January 3, 2005,

respectively, and requests that the Examiner consider the documents listed on the corresponding PTO/SB/08 forms filed with those Information Disclosure Statements, initial, sign, and date the forms to indicate consideration of the various listed documents, and return the initialed and signed forms with the next Office Communication.

Applicant thanks the Examiner for indicating that claims 5, 7, 8, 61-73, 84-92, 99, and 134-142 contain allowable subject matter. By this Amendment, Applicant has placed claims 84 and 134 in independent form. Applicant submits that claims 84 and 134, and their respective dependent claims, should thus be allowed.

Claims 11-15, 18, 20-22, 25, 26, 36, 37, 39-51, 54-59, 74-83, 102, 105-108, 111, 113-115, 118, 119, and 131-133 were withdrawn from consideration. Applicant again traverses the withdrawal of claim 74 for the reasons set forth at pages 44-45 of the Amendment filed April 23, 2004. Reconsideration is requested. Further, Applicant requests the rejoinder of any withdrawn claims upon allowance of an independent claim from which such a withdrawn claim depends.

In the final Office Action, claims 1, 3, 4, 6, 9, 10, 16, 17, 19, 23, 24, 27, 35, 52, 53, 60, 93, 94, 96-98, 100, 101, 103, 104, 109, 110, 112, 116, 117, 120, 128-130, 160, and 161 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,974,981 to Bennett. Bennett discloses a cosmetic powder brush with a metered powder dispenser.

Of the claims rejected in view of Bennett alone, claims 1, 60, 93, 128, 160, and 161 are independent and each is directed to a device for applying product. Independent claims 1 and 60 recite, among other things, "a removable unit defining a substantially enclosed space . . . configured to be removably received in the housing . . . [and] at least

part of the removable unit being configured to be removed from the housing while the unit defines the substantially enclosed space.” Independent claim 93 recites, among other things, “a removable unit defining a substantially enclosed space . . . , configured to be removably received in a housing of a receptacle . . . , [and] the removable unit comprising a first portion configured to removably engage with the housing of the receptacle.” Independent claim 128 includes recitations similar to those of claim 93. Independent claim 160 recites, among other things, a “removable unit being configured to be removably positioned on a receptacle containing a product and being configured to be removed from the receptacle while the unit defines the substantially enclosed space,” and independent claim 161 contains a similar recitation.

At page 2 of the final Office Action, the Examiner asserts that Bennett discloses “a removable unit 22, 24 defining a substantially enclosed space, at least part of the removable unit 22, 24 configured to be removably received in a housing, the removable unit 22, 24 comprising a first portion 24 being configured to be removably engaged with the housing of receptacle 30.” Applicant respectfully disagrees with the Examiner’s assertions that the cylinder member 24 disclosed in Bennett forms part of a “removable unit” with brush 22 as required by claims 1, 60, 93, 128, 160, and 161. In particular, Bennett discloses that outer housing member 42, deformable container 28, and cylinder member 24 are assembled together as a single unit that is removable from brush 22 without being removable from each other. Although Fig. 1 of Bennett shows the constituent elements of the dispenser 20 as separated elements, Bennett clearly discloses that Figs. 2 and 3 show the dispenser 20 in its assembled configuration. (Col. 4, lines 12-16.)

Further, Bennett clearly discloses that when used to apply product, the cosmetic brush 22 is removed from cylinder member 24. (Col. 5, lines 3-7.) Bennett does not either explicitly disclose or suggest that cylinder member 24 is intended or configured to be removed along with brush 22 from container 28 and housing member 42 such that cylinder member 24 and brush 22 form a “removable unit,” as set forth in claims 1, 60, 93, 128, 160, and 161. For at least this reason, Applicant requests withdrawal of the Section 102 rejection based on Bennett.

Claims 1, 3, 16, 35, 53, 60, and 160 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,480,331 to Lecker. Of these claims, claims 1, 60, and 160 are independent. Lecker discloses a cosmetic brush.

Each of claims 1 and 60 recites, among other things, a removable unit that defines a substantially enclosed space and that is “configured to be removed from the housing while the unit defines the substantially enclosed space.” Claim 160 contains a similar recitation. At page 4 of the final Office Action, the Examiner asserts that Lecker discloses “a device (Figure 3) comprising . . . a removable unit 1 defining a substantially enclosed space . . . [and] being configured to be removed from the housing 4 while the unit defines the substantially enclosed space.” Contrary to the Examiner’s assertion, the brush holding member 1 of Lecker is not configured to be removed from part 4 while the brush holding member 1 defines the substantially enclosed space. More specifically, Lecker discloses that the brush holding member 1 has one extremity closed with a plug or block 2 positioned therein and an extremity opposite the closed extremity defining a neck 14. The neck 14 defines an opening through which product may pass to load the brush member 3 and through which the brush member 3 may protrude in order

to apply product. The brush holding member 1 thus has a large opening when removed from parts 4 and 5 of the Lecker device. Therefore, Lecker fails to disclose or otherwise suggest that the brush holding member 1 is configured to be removed from part 4 while defining a substantially enclosed space. For at least this reason, the Section 102 rejection based on Lecker should be withdrawn.

Claims 60, 160, and 161 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 813,813 to Munroe. Each of these claims is independent and each has been amended to recite “at least one nonbristled application element.”

Munroe discloses a mucilage bottle. The mucilage bottle includes a brush 14^a having bristles held in a tube 18 connected to a closure 15. (Munroe, p. 1, lines 73-84). The brush 14^a rests on an absorbent support 5 that feeds mucilage to the brush 14^a in a regulated amount so as to avoid the need to wipe the brush 14^a before using it to apply the mucilage. (Munroe, p. 1, lines 9-23). Munroe thus discloses a brush 14^a having bristles for the application of mucilage and therefore fails to disclose or otherwise suggest “at least one nonbristled application element,” as recited in claims 60, 160, and 161. For at least this reason, therefore, the Section 102 rejection based on Munroe should be withdrawn.

In the Office Action, various dependent claims were rejected based on either Bennett or Lecker in view of U.S. Patent No. 6,447,191 to Vasas. Vasas, however, does not cure the above-noted deficiencies of either Bennett or Lecker, and the Examiner does not assert otherwise in the Office Action. Rather, the Examiner relies on Vasas only for its alleged teaching of “an application member 44 made of a porous

material or other material.” Therefore, the Section 103 rejections based on Vasas in combination with either Bennett or Lecker should be withdrawn.

By this Amendment, Applicant also as added new claims 162-188, which depend from one of claims 1, 60, 93, 160, and 161, and are allowable for at least the same reasons as each of those respective independent claims. Support for the new dependent claims can be found at least in the original specification, claims, and drawings.

For at least the above reasons, independent claims 1, 60, 74, 84, 93, 128, 134, 160, and 161 are allowable, and therefore so are any claims dependent on those claims. In addition, at least some of the dependent claims recite unique features and/or combinations which are not taught or suggested by the cited art, and therefore at least some of those dependent claims also are separately patentable.

Applicant respectfully requests that the finality of the Office Action dated September 8, 2004 be withdrawn for the reasons explained above and that this Amendment be entered, placing claims 1-33, 35-126, 128-142, and 160-188 in condition for allowance. Applicant respectfully points out that the final action by the Examiner presented new grounds of rejection and new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the rejections and place the application in condition for allowance.

For the above reasons, Applicant requests the withdrawal of the outstanding claim rejections, the rejoinder of the withdrawn claims, and the allowance of claims 1-33, 35-126, 128-142, and 160-188.

The Office Action contains characterizations and assertions, for example, regarding Applicant's claims and the cited art, with which Applicant does not necessarily agree. Applicant declines to subscribe to any characterizations and/or assertions unless expressly stated otherwise herein.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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